

# Stevens & Lee

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## Patrick D. Kennedy

Of Counsel

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## Areas of Focus

### Industry

Energy

Higher Education

State and Local Government

Patrick concentrates his practice in administrative law and litigation, with a particular emphasis on public contracts law and regulatory compliance.

For more than 40 years, Patrick has represented private clients doing or seeking to do business with the State of New Jersey and its municipalities. He fully understands the emergent processes surrounding NJ public procurement, and he and his team have significant experience in, and are prepared to work on expedited matters involving State agencies and municipalities. Patrick also has extensive experience advising clients on the amicable resolution of ongoing procurement or contract compliance issues. He frequently advises clients on bid proposal development, reviews of competitor submissions for compliance, and on protest initiation or defense strategy, costs and risks.

Prior to entering private practice, Patrick served in a number of capacities within New Jersey State Government. He has worked as a program analyst for the New Jersey Legislature's Office of Fiscal Affairs, and in various capacities for the Departments of Civil Service (now Personnel), the Department of Treasury, and the Office of Administrative Law. As former Assistant to the Director of the New Jersey Department Treasury, Division of Purchase and Property, he was responsible for the oversight of agency complaints against vendors, the hearing of bid protests and the development of regulations impacting the State's procurement process. As an Assistant Director of the New Jersey Office of Administrative Law, he established a program to evaluate the state's administrative law judges.

Patrick served as hearing officer for significant matters involving vendor responsibility and potential debarment. He acted as hearing officer in *Keyes Martin v. Division of Purchase and Property*, a leading case in New Jersey involving vendor responsibility and conflicts, and how such conflicts can impact on a bidder's rights to a State contract.

## Representative Matters

- **Contract Award Defense** – We successfully opposed an appeal seeking to overturn the New Jersey Division of Property Management and Construction's award of a multimillion dollar contract for the comprehensive renovation and restoration of the New Jersey Executive State House. In a case of first impression, the New Jersey Appellate Division agreed with our argument, finding that Building Control Systems (C043), a sophisticated, complex and highly technical global mechanism involving the total integration of a building's various control systems, does not constitute a subset of the Heating Ventilation Air Conditioning Refrigeration (HVACR) (C032) trade, such that it must be disclosed by a prime contractor in its bid pursuant to the subcontractor disclosure statute, N.J.S.A. 52:32-2b. In addition to preserving the proper award of the contract to Daniel J. Keating Company, the Appellate Division's published opinion will serve as a seminal case for public bidding in New Jersey and the naming of subcontractors. In re Protest of Contract Award for Project A1150-08, N.J. Executive State House Comprehensive Renovation & Restoration, N.J. Super. (App. Div. 2021).
- **Cannabis License Award Challenge** – We successfully overturned the State of New Jersey's award of medicinal cannabis licenses. The New Jersey Department of Health, the state agency responsible for soliciting and awarding medicinal cannabis licenses, awarded a total of six licenses to six different vendors under which vendors may cultivate, manufacture and dispense medicinal cannabis products to qualified patients throughout the State. We represented an unsuccessful applicant in an appeal of those license awards to the New Jersey Appellate Division, arguing, among other things, that the license awards must be reversed both because the award procedures failed to adhere to tenets of administrative due process and also because the scoring of applicants was highly inconsistent and arbitrary, capricious and unreasonable. In a published opinion, the Appellate Division agreed with our arguments, finding that the award processes administered by the Department of Health were discordant with administrative due process and that its inconsistent scoring of applicants was manifestly arbitrary, capricious and unreasonable. The Court therefore overturned the Department of Health's license award decisions and ordered further remand proceedings for the issuance of licenses. In the Matter of the Application for Medicinal Marijuana Alternative Treatment Center for Harvest of New Jersey, LLC, N.J. Super. (App. Div. 2020).
- **Contract Award Challenge** – We represented an unsuccessful bidder in a \$6.5 billion contract for pharmacy benefits management services. We appealed the award decision by the New Jersey Division of Purchase and Property, arguing that the successful bidder included an improper pricing reservation in its bid proposal that rendered it fatally defective. In a published decision, the New Jersey Appellate Division agreed with our argument, finding the successful bidder's pricing exception to be a material, nonwaivable deviation from the bid specifications. The Court therefore reversed the State's contract award to the low bidder and ordered a rebid. (In the Matter of Request for Proposals #17DPP00144, 454 N.J. Super. 527 (App. Div. 2007)).
- **Contract Award Challenge** – Obtained an emergent stay of the opening of bids in response to an RFP while the contract award was challenged. Our client challenged the improper limitation of competition on the RFP to six brand-name original equipment manufacturers. Secured a stay of the opening of the bids in response to the RFP while the Appellate Division heard the merits of the challenge. (In the Matter of Request for Proposals 00-X-25950 For Minicomputer,

- Microcomputer, Word Station and Associated Products Term Contract, A-4110-98/5).
- **Contract Award Reversal** – Secured reversal of a contract award for our client, an unsuccessful bidder on an RFP to supply reflective sheeting and support services required to produce license plates. Challenged the contract award, arguing that the successful bidder made a conditional bid. The Appellate Division held that the successful bidder's response to a line item in the RFP constituted a nonwaivable deviation from the RFP and reversed the contract award. (In the Matter of Request for Proposals No. 98-X-29314 Reflective Sheeting License Plates, 315 N.J.Super. 226 (App. Div. 1998).
  - **Re-Bid Won** – Won a re-bid following a bid protest. Protested the award of the instant lottery ticket printing contract, arguing that the Division of Purchase and Property's post-bid opening price negotiation violated New Jersey public procurement law. In a Dec. 2, 2009 written decision, the Division ordered a complete re-bid of the instant lottery tickets printing contract, finding that its post-bid opening actions to secure price concessions were in direct contravention to the unambiguous provision of N.J.S.A. 52:34-12(f), which requires the Division's ability to negotiate be expressly set forth in the invitation to bid. (RFP 09-X-20136, Printing: Instant Lottery Tickets – Standard and Proprietary Games – New Jersey Lottery ("NJL")).
  - **Re-Bid Won** – Won a re-bid after we protested the award of a furniture, system, open plan/landscape contract. Argued that the Division impermissibly supplemented the RFP, post-bid, through the best and final offer ("BAFO") process, to include higher-tiered price lines and the Division's prime award was based on an internal brand standard not defined in the RFP. In a written decision dated Feb. 22, 2010, the Division agreed with our arguments that the expansion of the scope of this contract through the BAFO process was inappropriate, rescinded all recommended awards and ordered a re-bid. As a result of this decision, the current incumbents' contracts (including our client's contract), were extended pending the re-bid. (RFP 09-X-39551, Furniture, System, Open Plan/Landscape following a bid protest.)
  - **Stay of Contract Termination** – Secured an emergent stay pending disposition of the appeal of the award of a contract for which our client was the intended recipient, after the contract award was terminated without a hearing upon the protest of another company. Sought, and obtained, a stay of the termination pending our appeal of the matter. (In the Matter of Charity Care On-Line Management and Eligibility Verification Services Contract RFP No. 97-X-29685).

## Affiliations

- Governor Christine Todd Whitman's Transition Team for the Department of Personnel, Member
- Governor Jim McGreevey's Transition Team for the Department of Environmental Protection, Member
- Supreme Court Committee on Outside Activities of Judiciary Personnel, Former Member
- Rider University, Former Adjunct Professor
- The American Red Cross, Former Board Member

## Recognition

Since 2013, Patrick has been recognized in *The Best Lawyers in America* in the administrative/regulatory law, government regulations, and government contracts practice areas, based on selection by his peers. He was recognized and named 2015 Government Relations Practice Lawyer of the Year in the Princeton region.

He is AV®Preeminent™ rated by LexisNexis Martindale-Hubbell, which is the highest rating for legal ability and general ethics.

## Education

- Seton Hall University School of Law, J.D. with honors
- Rider College, B.S. with honors, Economics

## Bar Admissions

- New Jersey

## Court Admissions

- State Court of New Jersey